



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Law Firms

Key Workplace Documents

November 2018

Managing Risk: International Labor and Human Rights

Baker & McKenzie

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/lawfirms>

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the Key Workplace Documents at DigitalCommons@ILR. It has been accepted for inclusion in Law Firms by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

Managing Risk: International Labor and Human Rights

Abstract

A corporate leader's nightmare scenario: waking to the news of the collapse of a factory manufacturing the company's products, reading headlines about the company's involvement in child labor abuses, or learning of work stoppages at supplier plants over human rights issues.

As companies worldwide face rising pressure to comply with international labor and human rights standards, these scenarios cause great concern among corporate leaders for good reason. In addition to potential harm to workers, failing to manage labor and human rights risks can have a significant, long-lasting impact on their business strategies, legal risk profile and brand reputations.

Companies are also realizing the benefits of addressing these issues and making a conscious effort to promote basic rights among their workforces, including:

- Right to non-discrimination
- Prohibition of slavery, forced labor, and human trafficking
- Elimination of under-aged child labor
- Freedom of association

Keywords

Baker & McKenzie, risk, international labor rights, human rights, liability, brand reputation, business strategies

Comments

Required Publisher Statement

Copyright by Baker & McKenzie. Document posted with special permission by the copyright holder.

MANAGING RISK: INTERNATIONAL LABOR AND HUMAN RIGHTS

Five Reasons Leading Companies
Are Taking These Issues Seriously





Introduction

A corporate leader's nightmare scenario: waking to the news of the collapse of a factory manufacturing the company's products, reading headlines about the company's involvement in child labor abuses, or learning of work stoppages at supplier plants over human rights issues.



As companies worldwide face rising pressure to comply with international labor and human rights standards, these scenarios cause great concern among corporate leaders for good reason. In addition to potential harm to workers, failing to manage labor and human rights risks can have a significant, long-lasting impact on their business strategies, legal risk profile and brand reputations.

Companies are also realizing the benefits of addressing these issues and making a conscious effort to promote basic rights among their workforces, including:

- **RIGHT TO NON-DISCRIMINATION**
- **PROHIBITION OF SLAVERY, FORCED LABOR, AND HUMAN TRAFFICKING**
- **ELIMINATION OF UNDER-AGED CHILD LABOR**
- **FREEDOM OF ASSOCIATION**



More than 8,000 companies have signed the UN Global Compact and committed to aligning their operations with universal principles on human rights, labor, environment and anti-corruption. Other core international labor and human rights instruments include:





5 Ways You Benefit From Addressing Labor and Human Rights Issues

As labor and human rights continue to grow in importance, here are five ways you can benefit from addressing these issues in your operations, followed by practical tips for identifying and remedying abuses and how we can help ensure your business policies and practices do not infringe the rights of others.



MANAGE STAKEHOLDER ENGAGEMENT

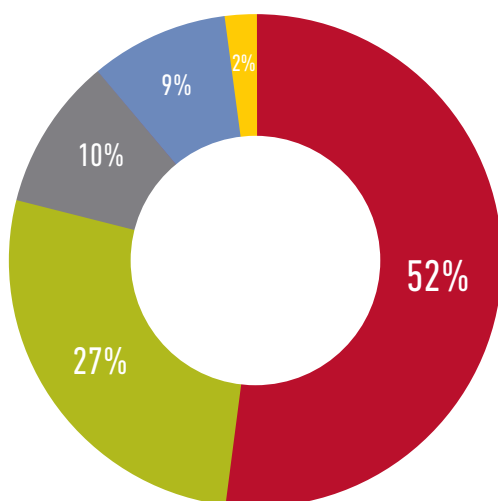


Stakeholders are becoming increasingly vocal in seeking to advance labor and human rights protections within corporations. For example:

- More than half of US shareholder proposal submissions in 2015 involved concerns about diversity, equal employment opportunity, labor and human rights and sustainability.
- Trade unions remain a driving force globally to extend their influence and continue to partner with NGOs and other activist groups to build coalitions on issues such as worker health and safety, wages and hours, child labor, freedom of association and collective bargaining.
- Global union federations are pressuring multinationals to sign international framework agreements that commit signatory companies to uphold a set of labor standards everywhere they operate, regardless of national laws.
- Activist groups regularly survey and grade brands on their efforts to address labor and human rights impacts.

Rather than ignoring these developments until they become a crisis, companies that identify and engage with key stakeholders can gain valuable commercial intelligence, build goodwill, and respond to their labor and human rights challenges to create shared value.

2015 SHAREHOLDER PROPOSAL CATEGORIES TO DATE (BASED ON PROPOSAL SUBMISSIONS¹)



- Environmental/social
- Board-focused
- Compensation
- Anti-takeover/strategic
- Routine

52% OF SHAREHOLDER PROPOSALS ARE RELATED TO **ENVIRONMENTAL/SOCIAL SUB-CATEGORIES**

Top 4 environmental/social sub-categories:

- Political Spending/Lobbying
- Climate Change/Sustainability
- EEO/Corporate Diversity
- Labor/Human Rights

PROTECT YOUR REPUTATION AND BRAND IMAGE



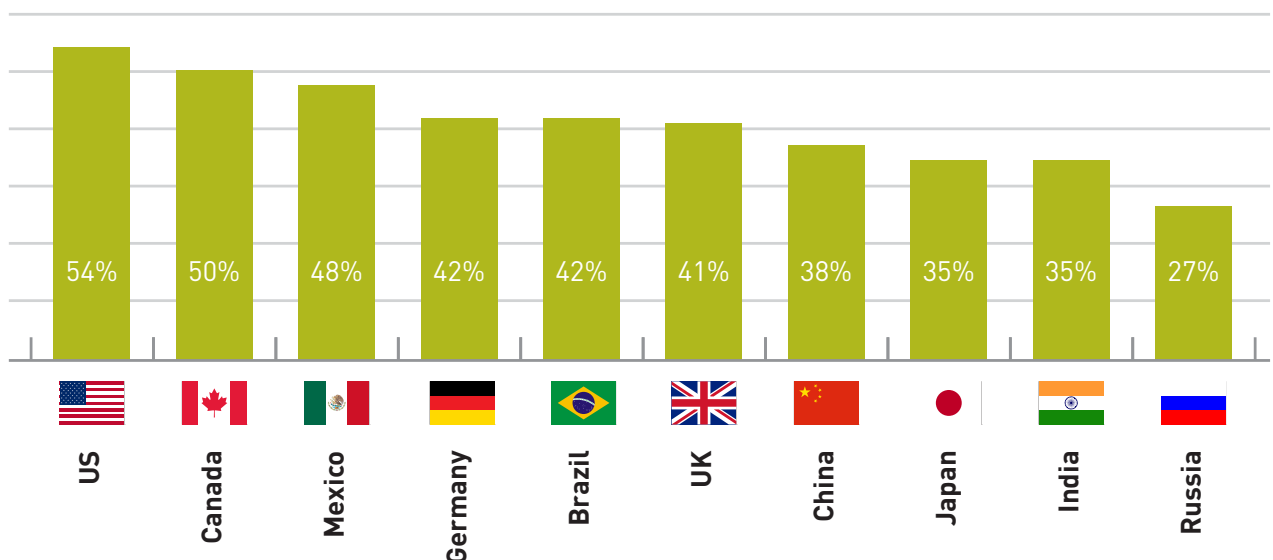
Allegations of labor and human rights abuses and workplace disasters can lead to negative publicity and threaten customer, employee, and investor loyalty.

Widespread use of the Internet and social media amplify the risk as news of these allegations spread quickly. Some large brand companies have learned about their own suppliers through crisis—an NGO posted a YouTube video showing the abuse of migrant workers and accusing the company of complicity; labor activists launched a global corporate campaign alleging slave wages and forced overtime; anti-logos and satirical ads protesting alleged abuses of workers went viral.

“Customers increasingly choose companies they want to do business with based on corporate behavior.”

Recent surveys underscore the new reality that these messages can have a major impact. Research shows that the next generation wants to work for companies that share their values, and investors are taking note of companies’ nonfinancial performance, including labor and human rights impacts and disclosures.² Companies that pay attention to these trends and implement labor and human rights policies and processes can reinforce their reputations as good corporate citizens while minimizing the time and resources they spend on crises.

PERCENT WHO DECIDED NOT TO DO BUSINESS WITH A COMPANY BECAUSE OF SOMETHING THEY LEARNED ABOUT HOW THE COMPANY CONDUCTS ITSELF³



MINIMIZE LEGAL LIABILITY



While protecting labor and human rights has historically been voluntary, a body of law is emerging that requires companies to take action.

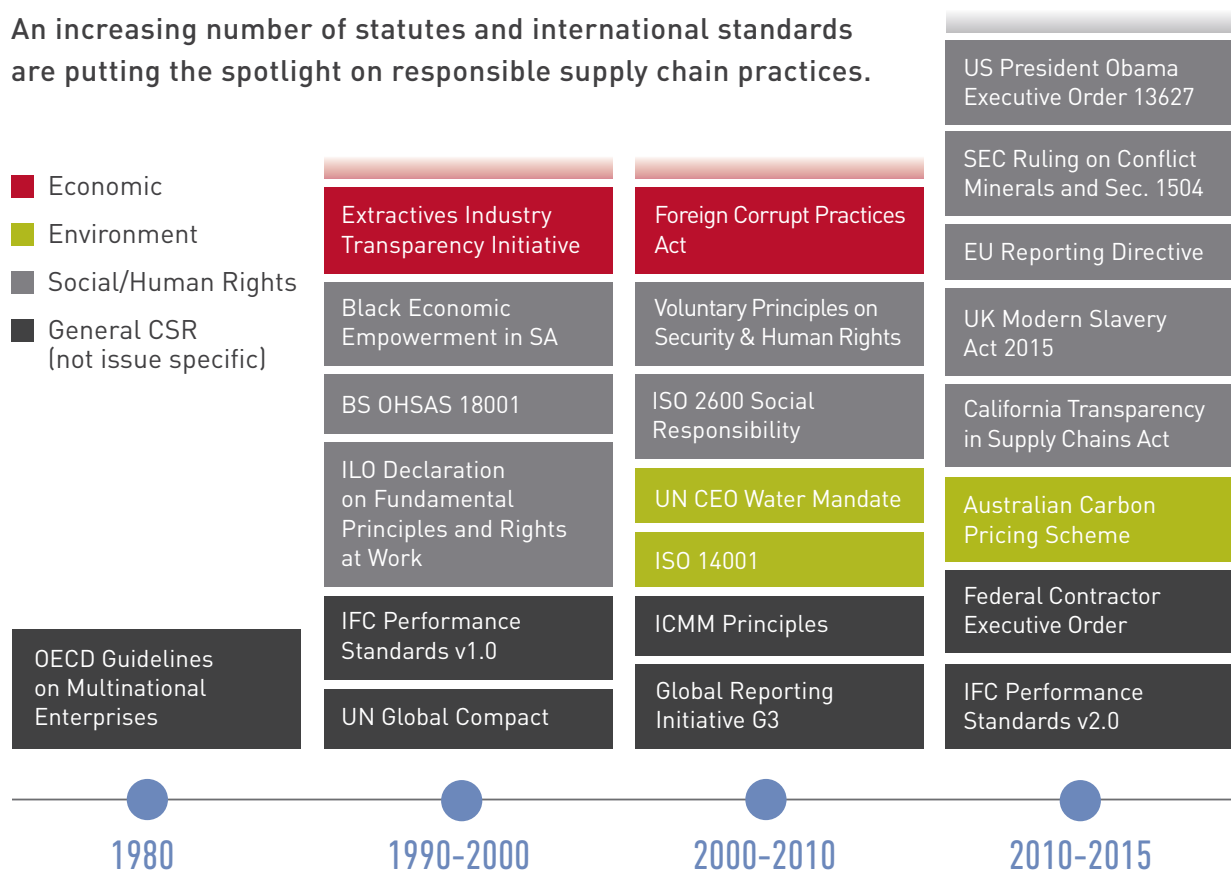
The US Dodd-Frank Act, California Transparency in Supply Chains Act of 2010, UK Modern Slavery Act of 2015, and EU Directive on Non-Financial Reporting are just a few examples of a growing global trend - national and local legislators are increasingly making CSR-type reporting and disclosure mandatory and holding companies accountable.⁴

Companies can also face civil and criminal legal liability for labor and human rights abuses. In recent years, for example, US courts and government agencies have ordered companies to pay millions to foreign workers in human trafficking cases. Plaintiffs also continue to pursue cases, including class actions, against multinational companies on the basis of tort, consumer protection and unfair competition laws and to file claims with a growing number of non-judicial bodies.

To manage increasing legal risk related to labor and human rights abuses, companies must track and devise strategies to respond to evolving international, federal and state laws and regulations on these issues.

PROLIFERATING LABOR AND HUMAN RIGHTS STANDARDS

An increasing number of statutes and international standards are putting the spotlight on responsible supply chain practices.



IMPROVE EMPLOYEE RELATIONS AND PRODUCTIVITY



In recent years, many countries have experienced high levels of labor unrest, including work disruptions, street confrontations with police and property damage.

Labor unions are also becoming more active, organizing across borders and employing tactics like corporate campaigns to advance their objective of expanding their influence.

By integrating labor and human rights compliance into their business practices, companies can minimize business disruptions sparked by conflicts over issues such as wages, child labor, health and safety, and poor working conditions. Research also shows companies that employ strategies to eliminate discrimination, prevent harassment, protect health and safety, pay decent wages and allow grievance reporting can improve employee engagement, boost productivity and reduce costs associated with staff recruitment, leave benefits and litigation.

5 LABOR AND HUMAN RIGHTS QUESTIONS

EVERY BOARD SHOULD ASK

Is responsibility for labor and human rights performance integrated into the highest levels of the company?

Does our supply chain touch a conflict-affected or high-risk jurisdiction?

What are various internal stakeholders (e.g., government affairs, sustainability, community relations, legal) saying about our company's commitment to respect human rights?

Have we conducted labor and human rights due diligence?

What assurances do we have that our labor and human rights statements are coordinated and credible?

CREATE GREATER BUSINESS VALUE



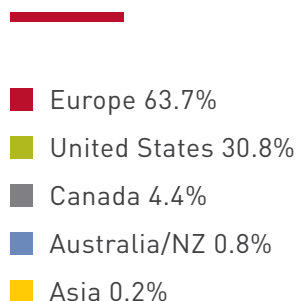
Companies that expand their risk assessments to include labor and human rights impacts often create new value.

Numerous studies confirm that companies with high ratings for environmental, social, and governance (ESG) factors have a lower cost of debt and equity, and outperform the market in the medium (three to five years) and long (five to 10 years) term.⁵

Investors are also putting their money in companies that respect labor and human rights. Socially responsible investment in the US grew by almost 500 percent from 1995 to 2012 and now accounts for more than 30 percent of all managed assets. For many investors, labor and human rights performance is a proxy for risk — companies that identify and address the root causes of conflict can reduce their overall risk profile.⁶ Indirect benefits such as key stakeholders having a better perception of a company can also build consumer loyalty and increase profitability.

PROPORTION OF GLOBAL SUSTAINABLE INVESTMENT BY REGION⁷

Global investment in assets under management considering ESG factors **tops USD21 trillion.**



WHAT COMPANIES SHOULD DO

Although labor and human rights issues are typically somewhere on the corporate agenda, even the most committed companies have problems with execution. The key to overcoming these challenges is embracing labor and human rights due diligence procedures and implementing remedial action plans. The UN Framework and Guiding Principles provide the following guidance:



WHAT WE DO

Our team has been at the forefront of developing international labor and human rights initiatives. We have helped shape and write international labor standards, worked on ILO committees considering labor and human rights challenges such as working time arrangements and the informal economy, and advised the UN Global Compact on its “Business for the Rule of Law” Initiative.

Based on this experience, we leverage our global network of 700 labor and employment lawyers across the globe to help businesses develop standards and implementation plans to operationalize labor and human rights principles. We also help companies manage their global labor relations to minimize risk. Our services include:

■ Labor and human rights policies

Advise on developing and implementing labor and human rights policies and statements, including global Codes of Conduct and grievance and whistleblower policies.

■ Risk assessments

Conduct global and country risk assessments to map external risk factors and identify key labor and human rights risks and impacts.

■ Human rights reporting

Provide counsel on labor and human rights reporting obligations and the content of strategic reports, CSR and sustainability reports, and websites.

■ Human rights compliance program

Design, implement and enforce labor and human rights compliance programs.

■ Global supply chain risk management

Advise on third-party contractor, supplier and sub-supplier statutory requirements and risk, including screening procedures, supplier codes of conduct, and audits.

■ Labor and human rights awareness training

Provide training to Board members, senior leadership team members, corporate sourcing and procurement departments, suppliers and employees on labor and human rights issues to raise awareness of red flags, both generally and specific to industries and regions.

■ Labor and human rights complaints

Investigate allegations of violations of labor and human rights and respond to complaints alleging noncompliance filed under the OECD Guidelines, bilateral trade agreements and other instruments.

■ Global corporate campaigns

Advise on trends in union activism and domestic and international corporate campaign activity.

■ Labor and human rights due diligence in transactions

Identify and assess potential and existing labor and human rights risks and impacts as part of overall due diligence to avoid compliance surprises and correct issues.

1. Based on proposal submissions. Source: EY Center for Board Matters, Shareholder proposal landscape: 2015 proxy season insights (April 2015).

2. Michael E. Porter and Mark R. Kramer, How companies can enrich shareholders—and the planet, *Fortune* (August 20, 2015).

3. Source: Nielson, “Reputation’s Role in Unlocking Brand Value” (March 12, 2015).

4. Kevin Coon and Cynthia Jackson, Managing Corporate Supply Chains: Challenges & Success in the Fight to Combat Forced Labour and Human Trafficking (2014).

5. Mark Fulton et al., Sustainable Investing: Establishing Long-Term Value and Performance, DB Climate Change Advisors, Deutsche Bank Group, 2012, dbadvisors.com.

6. EY, Tomorrow’s investment rules 2.0: Global survey of institutional investors on non-financial performance (2015).

7. Source: 2014 Sustainable Investment Review, Global Sustainable Investment Alliance.

Baker & McKenzie has been global since inception. Being global is part of our DNA.

Our difference is the way we think, work and behave – we combine an instinctively global perspective with a genuinely multicultural approach, enabled by collaborative relationships and yielding practical, innovative advice. Serving our clients with more than 4,200 lawyers in 47 countries, we have a deep understanding of the culture of business the world over and are able to bring the talent and experience needed to navigate complexity across practices and borders with ease.

www.bakermckenzie.com

© 2015 Baker & McKenzie. All rights reserved. Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a “partner” means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an “office” means an office of any such law firm.

This may qualify as “Attorney Advertising” requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.